

AMENDED IN ASSEMBLY MARCH 29, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2302**

**Introduced by Committee on Judiciary (Jones (Chair), Evans,  
Laird, Levine, Lieber, and Montanez)**

*(Principal coauthors: Assembly Members Arambula, Baca, Bass,  
Berg, Bermudez, Calderon, Chan, Chu, Coto, De La Torre,  
Evans, Frommer, Goldberg, Shirley Horton, Karnette, Koretz,  
Laird, Lieu, Liu, Montanez, Nakanishi, Nation, Oropeza, Parra,  
Pavley, Ridley-Thomas, Saldana, Salinas, Torrico, and Vargas)  
(Principal coauthors: Senators Cedillo, Ducheny, Escutia, Ortiz, and  
Speier)*

February 22, 2006

An act to amend Section 755 of the Evidence Code, relating to evidence.

LEGISLATIVE COUNSEL'S DIGEST

AB 2302, as amended, Committee on Judiciary. Evidence: court interpreters.

Existing law requires that in any action or proceeding pursuant to specified provisions of law, an interpreter be provided by the court for a party who is incapable of understanding or speaking the English language to interpret the proceedings in a language that the party understands and to assist communication between the party and his or her attorney.

This bill would revise the above provision to specify that in any civil action or proceeding, including, but not limited to, any family court proceeding or service, any juvenile court proceeding, any action involving a traffic or other infraction, any small claims court

proceeding, any proceeding to determine the mental competency of a person, or any court-ordered or court-provided alternative dispute resolution, including mediation and arbitration, in which a party does not proficiently speak or understand the English language, an interpreter be present to interpret the proceedings, as specified. The bill would also require a court to provide the interpreter, unless a party has notified the court that he or she has made arrangements for a private interpreter. The bill would also make related changes to that provision of law and would set forth findings and declarations of the Legislature.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. The Legislature finds and declares as follows:  
2     (a) California is emblematic of the American dream, a place of  
3     stunning natural beauty, a seat of international commerce, a land  
4     of unparalleled opportunity. As a result, California is the most  
5     populous and demographically diverse state in the nation, a  
6     meeting place of cultures, ethnicities, and ideas unlike any other  
7     in the world. Of the state's 34 million people, about 26 percent  
8     (roughly 8.8 million people) are foreign born. Californians speak  
9     more than 220 languages, and 40 percent of the state's population  
10    speaks a language other than English in the home. This  
11    extraordinary diversity is among the state's greatest assets and  
12    has helped make California an international leader in business,  
13    the arts, entertainment, engineering, medicine, and other fields.  
14    The state's diversity also poses unique challenges for the delivery  
15    of government services, particularly for the courts.  
16    (b) For Californians not proficient in English, the prospect of  
17    navigating the legal system is daunting, especially for the  
18    growing number of parties who do not have access to legal  
19    services and therefore have no choice but to represent themselves  
20    in court, which is a virtually impossible task for people who are  
21    unable to understand the proceedings. Nearly seven million  
22    Californians cannot access the courts without significant  
23    language assistance, cannot understand pleadings, forms, or other  
24    legal documents, cannot communicate with clerks or court staff  
25    and cannot understand or participate meaningfully in court

1 proceedings, much less effectively present their cases without a  
2 qualified interpreter. People with limited English proficiency are  
3 also often members of groups whose cultural traits or economic  
4 circumstances make them more likely to be subjected to legal  
5 problems, in part because perpetrators recognize their victims'  
6 limited ability to access judicial protection.

7 (c) The Legislature has previously recognized that the number  
8 of non-English speaking persons in California is increasing, and  
9 recognized the need to provide equal justice under the law to all  
10 California residents and to provide for their special needs in their  
11 relations with the judicial and administrative law system. The  
12 Legislature has likewise recognized that the effective  
13 maintenance of a democratic society depends on the right and  
14 ability of its residents to communicate with their government and  
15 the right and ability of the government to communicate with  
16 them.

17 (d) Inadequate resources to assist litigants with limited English  
18 proficiency affects the court's ability to function properly,  
19 causing delays in proceedings *for all court users*, inappropriate  
20 defaults, and faulty interpretation that can ultimately subvert  
21 justice. Our judicial system relies on the adversarial process in  
22 which neutral arbiters decide disputes based upon competing  
23 presentations of facts and law. Conducting court proceedings  
24 when one party is incapable of fully participating significantly  
25 impairs the quality and efficiency of the process and its results,  
26 including compliance with court orders. The courts have made  
27 significant efforts to assist litigants with limited English  
28 proficiency, including steps to increase the number of certified  
29 and registered interpreters and to provide interpreters in civil  
30 cases, if resources are available. Nevertheless, court proceedings  
31 are required to be conducted in English, and most crucial court  
32 forms and documents are available only in English, while the  
33 number of skilled interpreters has actually declined over the past  
34 decade and the number of persons requiring interpreter services  
35 has increased. As a result, a qualified interpreter is not provided  
36 in most civil proceedings.

37 (e) The inability to respond to the language needs of parties in  
38 court impairs trust and confidence in the judicial system and  
39 undermines efforts to secure justice for all. The authority of the  
40 courts depends on public perceptions of fairness and

1 accessibility. Any significant erosion of public trust and  
2 confidence in the fairness of judicial outcomes threatens the  
3 future legitimacy of the legal system. By excluding a large  
4 segment of the population from participation in an institution that  
5 shapes and reflects our values, we threaten the integrity of the  
6 judicial process. Resentment fostered by the inability to access  
7 the benefits of the court system can ultimately impair  
8 enforcement of judicial decrees and attenuate the rule of law.

9 (f) Reliance on untrained interpreters, such as family members  
10 or children, can lead to faulty translations and threaten the court's  
11 ability to ensure justice. Court interpretation is extremely  
12 difficult and takes a rare combination of skills, experience, and  
13 training. Apart from the possibility of fraud, unqualified  
14 interpreters often fail to accurately and comprehensively convey  
15 questions and distort testimony by omitting or adding  
16 information, or by stylistically altering the tone and intent of the  
17 speaker, thereby preventing courts from hearing the testimony  
18 properly. These problems compromise the fact-finding process  
19 and can result in genuine injustice.

20 (g) An overwhelming number of Californians believe that  
21 interpreters should be made available to assist non-English  
22 speakers in all court proceedings, and that interpreters should be  
23 provided free of charge to low income non-English speakers.

24 (h) California law currently mandates appointment of an  
25 interpreter for all witnesses in civil cases, and for parties with  
26 hearing impairments. In addition, California statutes mandate the  
27 appointment of an interpreter in adjudicative proceedings before  
28 state agencies, boards, and commissions at no charge to the  
29 parties whenever a party or the party's witness does not  
30 proficiently speak or understand English. Other states by contrast  
31 provide both witnesses and parties with a right to a court  
32 appointed interpreter in all civil matters at no cost to the party.

33 SEC. 2. Section 755 of the Evidence Code is amended to  
34 read:

35 755. (a) In any civil action or proceeding, including, but not  
36 limited to, any family court proceeding or service, any juvenile  
37 court proceeding, any action involving a traffic or other  
38 infraction, any small claims court proceeding, any proceeding to  
39 determine the mental competency of a person, or any  
40 court-ordered or court-provided alternative dispute resolution,

1 including mediation and arbitration, in which a party does not  
2 proficiently speak or understand the English language, and that  
3 party is present, an interpreter, as provided in this section, shall  
4 be present to interpret the proceedings in a language that the  
5 party understands, and to assist communication between the party  
6 and his or her attorney. Notwithstanding this requirement, a court  
7 may issue an ex parte order pursuant to Sections 2045 and 7710  
8 of, and Article 1 (commencing with Section 6320) of Chapter 2  
9 of Part 4 of Division 10 of the Family Code, without the presence  
10 of an interpreter. Unless a party has notified the court that he or  
11 she has made arrangements for a private interpreter, the court  
12 shall provide the interpreter. The interpreter shall be certified  
13 pursuant to Article 4 (commencing with Section 68560) of  
14 Chapter 2 of Title 8 of the Government Code, except as provided  
15 in subdivision (c) of Section 68561 of the Government Code.

16 (b) The fees of interpreters, other than court employees,  
17 utilized under this section shall be paid as provided in  
18 subdivision (b) of Section 68092 of the Government Code.  
19 However, the fees of an interpreter shall be waived for a party  
20 who needs an interpreter and appears in forma pauperis pursuant  
21 to Section 68511.3 of the Government Code.

22 (c) In any civil action in which an interpreter is required under  
23 this section, the court shall not commence proceedings until the  
24 appointed interpreter is present and situated near the party and  
25 his or her attorney. However, this section shall not prohibit the  
26 court from doing ~~any~~ *either* of the following:

27 (1) Issuing an order when the necessity for the order  
28 outweighs the necessity for an interpreter.

29 (2) Extending the duration of a previously issued temporary  
30 order if an interpreter is not readily available.

31 (d) This section does not prohibit the presence of any other  
32 person to assist a party.

33 (e) A local public entity may, and the Judicial Council shall,  
34 apply to the appropriate state agency that receives federal funds  
35 authorized pursuant to the federal Violence Against Women Act  
36 (P.L. 103-322) for these federal funds or for funds from sources  
37 other than the state to implement this section.

38 (f) The Judicial Council shall draft rules and modify forms  
39 necessary to implement this section, including those for the  
40 petition for a temporary restraining order and related forms, to

- 1 inform both parties of their right to an interpreter pursuant to this
- 2 section.

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